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OFFICE OF ENFORCEMENT

MEMORANDUM:

DATE: March 25, 1980

SUBJECT: PSD Applicability

FROM: Director, Division of Stationary Source Enforcement

TO: Stephen A. Dvorkin, Chief
General Enforcement Branch - Region 2

This is in response to your memo dated January 7, 1980, concerning the enforceability of a permit issued by the New York City Department of Air Resources (NYC DAR). Specifically, you asked whether a NYC DAR permit which contains an annual limit on the amount of fuel combusted by two diesel-fired co-generation units, can be used to limit the units' potential to emit. The existing PSD regulations allow a source's annual potential to emit to be limited by "enforceable permit requirements."

"Enforceable permit requirements", as that term is used in the PSD definition of potential to emit, was intended to mean requirements that are enforceable under the SIP. Unless a source has a SIP enforceable requirement limiting it to 100/250 tons of emissions per year, EPA cannot ensure that the source will not exceed the PSD threshold.

If the NYC DAR permit was not issued under the SIP and is not enforceable as part of the SIP, it cannot limit the source's potential to emit for purposes of PSD avoidance.

I suggest that your Division issue a formal applicability determination which reflects the above paragraphs.

Libby Scopino of my staff has communicated this response to Stu Roth by telephone. If you wish to discuss this further, please call Libby at 755-2564.

cc: Mike Trutna - CPDD
Peter Wyckoff - OGC

